IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 1036 of 2000(B)

CRA.158/1997 OF ADDL. SESSIONS COURT, ALAPPUZHA,
CC.360/1995 OF JDUL.MAGISTRATE OF FIRST CLASS, RAMANKARI.
.....

REVN. PETITIONER/APPELLANT/ACCUSED NO.1:

SURENDRAN,
S/O. KUTTAPPAN,
RANDUPURA VEEDU,
KAVALAM MURI,
KUNNUMMA VILLAGE, KUTTANAD.

BY ADV. SRI.P.VIJAYA BHANU,
SMT.P.MAYA.

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 5586/2000 IN CRL.R.P. NO. 1036/2000

DISMISSED

11/09/2007. **SD/- K.R.UDAYABHANU, JUDGE.**

//TRUE COPY//

prv.

K.R. UDAYABHANU, J.

CRL.R.P.NO. 1036 OF 2000

DATED THIS THE 11TH SEPTEMBER 2007

ORDER

The revision petitioner stands convicted for the offence under Section 55(1) of the Abkari Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for a further period of three months.

2. The prosecution case is that on 13-6-1995 at about 4.30 p.m. the accused two in number were found in unauthorised possession of toddy kept for sale in the property belonging to one Uthaman. Accused No.2 was acquitted by the trial court.

3. The evidence adduced in the matter consisted of the testimony of Pws.1 to 4 and Exts.P1 to P6 and Mos.1 and 2. Pws.2 and 3, the independent witnesses did not support the prosecution and turned hostile. The only evidence in support of the version of the prosecution is the testimony of PW1, the Excise Inspector. Counsel for the revision petitioner has stressed the fact that the chemical analysis report as per Ext.P6, three sealed bottles each containing 180 ml.of the liquid said to be toddy was received and on analysis the same was

found to be contained varying percentages of ethyl alcohol. As per Ext.P1 mahazar the sample taken at the spot is 750 ml. each in three bottles. Evidently the sample collected at the spot is not the one forwarded to the Laboratory. In the circumstances and in view of the fact that only the testimony of Pw1 supports the prosecution version, I find that the accused is entitled to benefit of doubt. The conviction and sentence imposed on the accused is set aside. The accused is acquitted. The Crl. revision petition is allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. NO. 1036 of 2000

ORDER

11-9-2007